IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.531 OF 1995

The State of Maharashtra]
(At the instance of Drugs]
Inspector (H.Q.) Food & Drug]
Administration Bandra (E)]
Bombay.]..Appellant

Vs.

1. Shri.Bharat Kantilal Mehta]
2. Shri.Nilesh Kantilal Mehta]
3. Mrs.Chandraben K.Mehta]
4. Mrs.Rashmi N.Mehta]
5. Shilpa A.Mehta]
6. M/s. Asia Chemicals]
50, Ashoka Chamber,]
Devji Ratanai Road,]
Bombay-9]..Respondents

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Shri.A.S.Shitole, A.P.P. for the State.
Mr.C.S.Gosalia for Respondent nos.1 to 6(absent).

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 23,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. State of Maharashtra has challenged the judgment and order dated 7th March, 1995 passed by the learned Metropolitan Magistrate, 6th Court, Mazgaon, Bombay in Case No. 233/S/88. By the said judgment and order, the respondents i.e. original accused were acquitted of the offences under Sections 18(c) punishable under Section 27(b)(ii) of Drugs and

Cosmetics Act.

2. The prosecution case briefly stated, is as under:

. On 27th February, 1986, the complainant P.W.1 Shri.A.S.Dube visited M/s. Asia Chemicals i.e. accused no.6. At that time, accused no.1 Bharat Mehta was present there. On inspection of sale and purchase records of M/s. Asia Chemicals, Shri.Dube found that Asian Chemicals had sold Glycerine to M/s. Seamless Capsules Pvt. Ltd. So also, he further found that accused no.6 sold Glycerine and liquid Paraffin to M/s. Indoco Remedies on 6.2.1985 and 30.5.1985. It was also found that Propylene Glycol was sold by accused no.6 to M/s. Neon Laboratories on 1.7.1985 and to M/s. Godama Laboratories on 26.4.1985. It was also noticed that Propylene Glycol and Sorbitol were sold by accused no.6 to M/s. Ramsum Laboratories on behalf of M/s. Leben Laboratories on 7.1.1985. According to prosecution, the products referred above are the drugs within the meaning of Section 3(b) of Drugs and Cosmetics Act for their sale. During the investigation, it was revealed that the products sold by the accused were used as ingredients in manufacture of pharmaceutical preparations such as

injections, ointments, capsules etc. It was also revealed that the accused had no licence to sell these drugs under Drugs and Cosmetics Act. Therefore, after completion of entire investigation on 26.2.1988 he filed complaint vide Exh.P-3 against all the accused.

3. The charge under Section 18(c) punishable under Section 27(b)(ii) of Drugs and Cosmetics Act came to be framed against the accused on 29.7.1993. All the accused pleaded not guilty and claimed to be tried. It is the defence of the accused that they were not dealing in drugs at the relevant time. It is their case that they were dealing in non-drugs chemicals at that time and they have not sold the articles of the subject matter of this case to the respective purchasers as drugs. It is further their contention that they did not sell them for use as components of drugs and as such, they were not required to hold any licence under the Act.

4. The learned Magistrate, after going through the evidence adduced by the prosecution, acquitted all the respondents-original accused of the offences charged. Hence, this appeal.

5. I have heard Mr.A.S.Shitole, the learned A.P.P.

for the appellant. None appeared for the respondents. I have also perused the record pertaining to the present case. After perusing the record, I am of the opinion that the view taken by the learned Sessions Judge was a possible and reasonable view.

6. As far as accused nos.2 to 5 are concerned, there is absolutely no evidence against them to show that they were incharge and responsible to accused no.6 M/s. Asia Chemicals for the conduct of its business at the time of commission of alleged offence. In such case, the view taken by the learned Magistrate in respect of these accused, is very much reasonable and possible.

7. As far as the remaining two accused are concerned, the complainant P.W.1 Shri.Dube has stated that accused no.1 Bharat Mehta was present when he inspected the premises of accused no.6 Asia Chemicals on 27.2.1986. Shri.Dube has further stated that accused no.6 sold Glycerine, liquid Paraffin and Propylene Glycol to various parties under the Invoice Exhibits-P-4 to P-7 and P-9 to P-11. On behalf of the defence, it is not disputed that these articles were sold under these invoices to different purchasers on different dates.

Admittedly, in the instant case, all the substances which are subject matter of this case, are substances, which could be used for a dual purpose i.e. as components of drugs as well as otherwise. Therefore, it is for the prosecution to establish that the accused sold the substances for use as components of a drug. The complainant has admitted in his cross-examination that accused no.6 does not claim to be a dealer in medicines and pharmaceutical and it only claims to be dealer in chemicals, minerals as manufacturer and representative. The evidence on record does indicate that the accused sold substances claiming to be dealer in non-drug chemicals. In the present case, P.W.2 Shri.Mehta is the panch witness. However, his evidence is not of much use to the prosecution. As far as the evidence of P.W.3 Shri.Pandit who was an employee of M/s. Indoco Remedies Ltd. is concerned, he has admitted that they were knowing that the accused were not dealing in drugs and substances i.e. light liquid paraffin used in routine course. From the evidence of any of the prosecution witnesses, it cannot be said that the accused sold the substances as a drug or for its use as components of drugs. What is required by law is the intention of seller and not intention of the purchaser. It is open to a person selling substance capable of being used as drug as

well as for any other purpose to inform purchasers by clear notice that the substances sold are not intended to be used as drug or component of drug. Except P.W.3 Shri.Pandit, who was an employee of M/s. Indoco Remedies Ltd. the prosecution has not examined any other purchaser. Therefore, there is absolutely no evidence to show as to what talk took place between the accused and the purchasers at the time of placing of the order in respect of the purchase of the articles or at the time of delivery. Looking to the evidence on record, the conclusion of the learned Magistrate that in the instant case, there is no evidence to show that accused sold the substances as drugs or for use as component of drugs, appears to be reasonable and possible view. So also, the conclusion of the learned Magistrate that no criminal intention on the part of the accused has been established in this case, appears to be reasonable and possible view.

8. The learned Magistrate has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth

of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

9. In this view of the matter, I do not find any merit in this appeal and the same is dismissed.

[V.K.TAHILRAMANI.J]